



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/174020

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 3, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Portage County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on June 22, 2016, at Stevens Point, Wisconsin, with the judge appearing by telephone. A hearing set for May 25, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS because she did not live with her two older children from June, 2013 through January, 2015.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Portage County Dept. of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. Petitioner received FS for herself and her children, including her two older daughters, during the period 2013 through 2015. In May, 2015, the county investigated petitioner's living circumstances after receiving reports that she was misstating her household.

3. The investigator found that petitioner's two older daughters primarily lived with their grandparents.
4. The county determined that petitioner was overpaid FS and Medical Assistance because she did not report that the two daughters lived elsewhere. By notices dated April 18, 2016, the county informed petitioner that she was overpaid \$4,586 in FS from June 1, 2013 through January 31, 2015, claim nos. [REDACTED] and [REDACTED]. The overpayment was determined by removing the two daughters from the FS household and comparing the FS that would have been issued without them to the amount actually issued.
5. Petitioner also lived with the grandparents during the time in question.

### **DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The investigation took place in May, 2015, and at that time petitioner had an apartment to which she moved February 1, 2015. Petitioner's two older daughters did not live there. They stayed with petitioner's parents. However, the overpayment period did not include February through May, 2015; it ended January 31, 2015.

Petitioner and her parents appeared at the hearing and testified that petitioner lived with them during the period June, 2013 through January, 2015, along with her children. I checked, and indeed notices were sent by the county to petitioner at the parents' address beginning in September, 2013.

I asked petitioner if she ever reported that she was living with her parents. She said she did and then described writing a statement that she prepared meals separately from them. Following the hearing I tried to find the statement in the State agency's electronic care file, but for some reason there were no documents under petitioner's case number after 2012. Nevertheless, petitioner's description of the statement sounds exactly like one that a county agency would request if an FS recipient reported household members with whom the recipient did not purchase and prepare meals.

I conclude, therefore, that petitioner was not overpaid FS. The evidence shows that she and her older daughters lived with the grandparents from 2013 through early 2015.

As noted during the hearing, this office did not open an appeal file for Medical Assistance. However, based upon this finding it is just as clear that petitioner was not overpaid MA. Her parents' presence would have had even less an effect on MA; while they potentially could have been included in an FS household, they clearly would not have affected MA eligibility.

I note also that there are older, outstanding claims against petitioner dating back to 2012. Thus I will order the county to reverse only the 2016 overpayment claims.

### CONCLUSIONS OF LAW

Petitioner was not overpaid FS because she accurately reported household members during the period in question.

**THEREFORE, it is**

### ORDERED

That the matter be remanded to the county with instructions to rescind the overpayment claims imposed in 2016 against petitioner and to cease recovery of them, within 10 days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 27th day of June, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 27, 2016.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability